IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LONNIE ADAMS AND BRIAN JAMES, Plaintiffs,	:	CIVIL ACTION NO. 05-1169
v.	:	
CITY OF PHILADELPHIA, Defendant.	:	

MEMORANDUM AND ORDER

NEWCOMER, S.J. May 5, 2005

Presently before the Court is Defendant's Motion to Dismiss Plaintiffs' Complaint alleging racial discrimination. For the reasons discussed below, the Motion is granted in part and denied in part. An appropriate Order follows.

I. BACKGROUND

Plaintiffs, Lonnie Adams and Brian James, are African-American Philadelphia Police officers who filed their Complaint alleging that Defendant, City of Philadelphia, racially discriminated against them and created a hostile work environment after they complained about the alleged racially motivated conduct of another officer. The basis for their Complaint stems from events that began on November 4, 2002 when Plaintiffs observed an African-American female rag doll hanging, as if it had been lynched, from a ladder in the back of a van. Plaintiffs later determined that this van was owned by a Caucasian police officer, Michael Kelly. Plaintiffs complained to a supervisor and filed an EEOC complaint with the Defendant. Plaintiffs aver

that both Officer Kelly, as well as Sergeant Cray, who allegedly failed to do anything about the matter, were never suspended despite a recommendation Police/Civilian Board of Inquiry that they be suspended. In addition, Plaintiffs allege that following their complaint of racial discrimination, they were denied access to the computerized vehicle tracking system ("NCIC") and were ostracized by fellow officers.

II. LEGAL STANDARD

The Court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom" when considering a Rule 12(b)(6) motion. Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000) (internal quotations omitted). A motion to dismiss may only be granted where the allegations fail to state any claim upon which relief may be granted. See Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997). The inquiry is not whether plaintiffs will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims. See In re Rockefeller Ctr. Props., Inc. Sec. Litig., 311 F.3d 198, 215 (3d Cir. 2002).

III. DISCUSSION

The Court will analyze Plaintiffs' claims only under Title VII below because the legal standards for § 1981 and PHRA claims are identical to the standard in a Title VII case. See Lewis v. University of Pittsburgh, 725 F.2d 910, 915 n. 5 (3d

Cir. 1983); Bullock v. Children's Hosp. of Philadelphia, 71 F. Supp. 2d 482, 485 (E.D. Pa. 1999); see also Knabe v. Boury Corp., 114 F.3d 407, 410 n.5 (3d Cir. 1997) (employer liability under the PHRA follows the standards set out for employer liability under Title VII). Accordingly, the analysis and conclusions for the Title VII claim are likewise applicable to Plaintiffs' § 1981 and PHRA claims.

1. Count I – Title VII and Hostile Work Environment Claims

Defendants move to dismiss Count I of Plaintiffs' Complaint, alleging that Defendants created a hostile work environment for, and otherwise discriminated against, Plaintiff because of and in retaliation for their complaints regarding an African-American rag doll that was allegedly hanging from a ladder on the vehicle owned by another Philadelphia police officer. This Court will first discuss the Title VII claim and then the hostile work environment claim.

A. *Title VII*

Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-3(a), a plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). To establish a prima facie case, a plaintiff must show that he belongs to a protected class, that he was

qualified for but was rejected for a job for which the employer was seeking applicants, and that non-members of the protected class were treated more favorably. See McDonnell Douglas, 411 U.S. at 802; Burdine, 450 U.S. at 252-53. If the plaintiff succeeds in proving his prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. See id. Should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. See Burdine, 450 U.S. at 252-53 (quoting McDonnell Douglas, 411 U.S. at 802, 804).

Viewing the facts in the light most favorable to the Plaintiff, Count I survives a motion to dismiss. See In re Rockefeller Ctr. Props., Inc. Sec. Litig., 311 F.3d at 215 (noting that the inquiry is not whether plaintiffs will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims); Pl's Compl. at ¶'s 10; 17-23; 29-35. Plaintiff's Title VII claim may proceed.

B. *Hostile Work Environment*

To establish a prima facie case of hostile work environment, a plaintiff must show that (1) he suffered intentional discrimination because of his membership in a

protected class; (2) the discrimination was *pervasive and regular*; (3) the discrimination detrimentally affected him; (4) the discrimination would detrimentally affect a reasonable person of the same protected class in that position; and (5) the existence of respondeat superior liability. See Verdin v. Weeks Marine, Inc., No. 03-4571, 2005 U.S. App. LEXIS 2649 at *7-8 (3d Cir. Feb. 16, 2005) (emphasis added); Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999). Factors which may indicate a hostile work environment include: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Sherrod v. Phila. Gas Works, 57 Fed. Appx. 68, 75, 2003 U.S. App. LEXIS 1428 at *18-19 (3d Cir. 2003 (quoting Harris v. Forklift Sys., 510 U.S. 17, 23 (1993)). To establish a hostile work environment, a plaintiff must show harassing behavior "sufficiently severe or pervasive to alter the conditions of employment." Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67 (1986). Even after considering the facts in the light most favorable to Plaintiffs, the allegations fail to amount to a hostile or abusive work environment as a matter of law. Plaintiffs' allegation that they were reprimanded for performance issues and prohibited from using the computerized vehicle tracking system is an isolated event. Any subsequent

ostracization by fellow officers, as alleged, does not amount to a hostile work environment. See Burton v. Pa. Bd. of Prob. & Parole, No. 02-2573, 2002 U.S. Dist. LEXIS 10758, at *10 (E.D. Pa. June 13, 2002) (citing Stone v. West, 133 F. Supp. 2d 972, 987 (E.D. Mich. 2001) (isolated offensive comments, vague complaints of being given more onerous work assignments and a dispute concerning the proper designation of vacation and sick time off do not amount to a hostile work environment). This claim is dismissed because the pleading does not even address the pervasive and regular standard, and thus it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.

2. Count II – Title VII Retaliation

To make out a prima facie claim for retaliation under Title VII, a plaintiff must demonstrate that (1) he engaged in protected activity; (2) the defendant took an adverse employment action against him, and (3) that a causal link exists between the protected activity and the adverse action. See Kidd v. MBNA Am. Bank, N.A., 93 Fed. Appx. 399, 401, 2004 U.S. App. LEXIS 5694 at *6 (3d Cir. 2004) (citing Kachmar v. Sungard Data Sys., 109 F.3d 173 (3d Cir. 1999). Plaintiffs have sufficiently alleged such a claim, and this Count may proceed. See Pl's Compl. at ¶'s 42-44. Contrary to Defendant's argument, Plaintiff James did exhaust his administrative remedies. The fact that he failed to check the

"retaliation" box in the EEOC Charge of Discrimination does not preclude Plaintiff's claim. See Mullen v. Topper's Salon and Health Spa, Inc., 99 F. Supp. 2d 553, 556 (E.D. Pa. 2000) (finding that "[I]t is not necessary for a complaint to mirror an EEOC charge; it must only be within the scope of the charge. *That the 'retaliation' box was not checked does not itself preclude plaintiff's claim.*") (emphasis added). The facts stated in the Complaint were within the scope of Charge of Discrimination and were specific enough to put the EEOC on notice about the alleged retaliation. See id.; Pl's Ex. C. Thus, Plaintiff James' claims may proceed.

3. Counts III & IV – 42 U.S.C. § 1981 & PHRA

As discussed above, the legal standards for these claims are identical to the Title VII claims. As such, these claims may proceed at this time.

An appropriate Order follows.

S/ Clarence C. Newcomer
United States District Judge

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O R D E R

AND NOW, this 5th day of May, 2005, upon consideration of Defendants' Motion to Dismiss (Doc. 3) and Plaintiff's Response, it is hereby ORDERED that said Motion is GRANTED in part and DENIED in part. Plaintiffs' hostile work environment claim, as alleged in Count I of the Complaint, is DISMISSED without prejudice. The remaining Counts may proceed.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge